

The State of Alaska Seeks NPDES Primacy

EPA's Delegation Process

Statutory Requirements

- Section 402 of CWA requires all discharges to surface waters be permitted under the NPDES permit program.
- CWA intends for states to implement (have primacy) for the NPDES program with the EPA acting in an oversight role.
- If AK receives Primacy, DEC would take over discharge permitting authority and be responsible for issuing and monitoring compliance with the permits.

Application Components for a NPDES Program:

- 6 Components to the NPDES permit program.
 - NPDES Permitting
 - Stormwater Program
 - Compliance and Enforcement
 - Federal Facilities
 - Pre-treatment Program
 - Biosolids Management Program (optional)
- State is proposing to assume all but Biosolids

ADEC's Application Submittal Timeline

- SB 110: Effective State Law as of 8/27/2005, directs DEC to submit a complete application to EPA by July 1, 2006
- ADEC's Application Schedule:
 - Early January 2006: Public Notice of Draft Regulations
 - March 2006: Draft Primacy Application to EPA
 - July 1, 2006: Official Primacy Application to EPA

What Does a NPDES Primacy Application Contain?

- It consists of:
 - Governor's Letter Requesting Primacy Approval
 - Program Description
 - Memorandum of Agreement between State and EPA
 - Attorney General Statement of Legal Authorities
 - Statutes and Regulations
 - A Continuing Planning Process Document

EPA's Approval Process

- Within 30 days from receipt of State's Application EPA must make an "Completeness Determination".
- If determined "Complete" EPA has 90 days to perform its statutory review process
- Within this 90 day review timeframe EPA will engage in:
 - Tribal Consultation
 - Endangered Species Act Consultation and Essential Fish Habitat Consultation with the "Services"
 - Public Participation Process

Formal Tribal Consultation

- The 90 day statutory review timeline pre-dates the Federal Indian Policy and the EPA Indian Policy (1984)
- EPA intends to uphold its trust responsibility to consult and coordinate with tribal governments on a formal government to government basis for this federal action (EPA Region 10 Tribal Consultation Framework)

EPA's Approval Process cont'd

- The State and EPA may extend the statutory review period by agreement (which is plausible due to consultation efforts)
- EPA makes a final determination to either approve or disapprove the State's program based on the regulatory and statutory requirements taking into consideration all comments received.
- EPA's decision may take between 1.5 to 2 years

Public Participation Process

- Public Participation Process includes:
 - EPA Public Notices the Application for public review and public comment (for 45 days)
 - Public Hearings (within 30 days)

If the State's Program is Approved EPA will ...

- Also have enforcement authority over all dischargers
- Have an oversight role of State's Program
- Implement the Biosolids Management Program in Alaska
- Implement the Non-Delegable components of the Federal NPDES Program, these include:

Non-Delegable Components Are:

- 301(h) Waivers (Secondary Treatment)
- Facilities located 3 miles outside of State Waters--Oil and Gas; Seafood Processing Vessels
- Facilities on Tribal Lands (Metlakatla Reservation)

How will an Approval Decision Affect Tribes?

- The State will assume the responsibility to implement Alaska's APDES program in rural Alaska
- EPA will continue to implement the federal NPDES program on the Metlakatla Reservation

Tribal Consultation Process after State Receives Primacy

- If the State receives primacy EPA will need to define an acceptable approach and process to consult with tribes on State activities

Additional Opportunities to Discuss Alaska Primacy Efforts

- Alaska Inter-Tribal Council Annual Meeting
December 5, 2005
- Alaska Forum on the Environment
February 6, 2006

Alaska NPDES Delegation Team Contacts

- Contacts involved in Government to Government Tribal Consultation Efforts:
- Greg Kellogg, Deputy Director, EPA, Alaska Operations Office (907) 271-6328
- Nina Kocourek, EPA NPDES Regional Team Lead, Seattle (206) 553-6502
- Michelle V. Davis, Tribal Coordinator and Tribal Team Lead for NPDES Delegation (907) 271- 3434

Informational Resources

- EPA Region 10 EPA Office of Water Website links to DEC Alaska's NPDES Primacy Page:
<http://yosemite.epa.gov/r10/WATER.NSF/NPDES+Permits/AKPrimacy>

Alaska DEC's Main Link to NPDES Primacy Page:
<http://www.dec.state.ak.us/water/npdes/npdes.htm>